

House File 87 - Introduced

HOUSE FILE 87

BY HEDDENS

A BILL FOR

1 An Act relating to financial exploitation of older individuals
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **726.11 Financial exploitation of an**
2 **older individual.**

3 1. A person commits financial exploitation of an older
4 individual when the person stands in a position of trust or
5 confidence with the older individual and knowingly and by undue
6 influence, deception, coercion, fraud, breach of fiduciary
7 duty, or extortion, obtains control over or otherwise uses
8 or diverts the benefits, property, resources, belongings, or
9 assets of the older individual.

10 2. A person who commits financial exploitation of an older
11 individual is guilty of the following, as applicable:

12 *a.* Financial exploitation in the fifth degree which is
13 a simple misdemeanor if the value of the funds, benefits,
14 property, resources, belongings, or assets is two hundred
15 dollars or less.

16 *b.* Financial exploitation in the fourth degree which is
17 a serious misdemeanor if the value of the funds, benefits,
18 property, resources, belongings, or assets exceeds two hundred
19 dollars but does not exceed five hundred dollars.

20 *c.* Financial exploitation in the third degree which is an
21 aggravated misdemeanor if the value of the funds, benefits,
22 property, resources, belongings, or assets exceeds five hundred
23 dollars but does not exceed one thousand dollars.

24 *d.* Financial exploitation in the second degree which is a
25 class "D" felony if the value of the funds, benefits, property,
26 resources, belongings, or assets exceeds one thousand dollars
27 but does not exceed ten thousand dollars.

28 *e.* Financial exploitation in the first degree which is a
29 class "C" felony if the value of the funds, benefits, property,
30 resources, belongings, or assets exceeds ten thousand dollars.

31 3. Nothing in this section shall be construed to limit other
32 remedies available to the older individual including those
33 provided under chapters 235F and 236.

34 4. A person alleged to have committed a violation under this
35 section shall be charged with the respective offense, unless

1 a charge may be brought based upon a more serious offense,
2 in which case the charge of the more serious offense shall
3 supersede the less serious charge.

4 5. Nothing in this section shall be construed to impose
5 criminal liability on a person who has made a good-faith effort
6 to assist an older individual in the management of the older
7 individual's benefits, property, resources, belongings, or
8 assets, but through no fault of the person, the person has been
9 unable to provide such assistance.

10 6. It shall not be a defense to financial exploitation of
11 an older individual that the alleged perpetrator did not know
12 the age of the older individual or reasonably believed that the
13 alleged victim was not an older individual.

14 7. For the purposes of this section:

15 a. "*Caretaker*" means a related or nonrelated person who has
16 the responsibility for the protection, care, or custody of an
17 older individual as a result of assuming the responsibility
18 voluntarily, by contract, through employment, or by order of
19 the court. "*Caretaker*" does not include a caretaker as defined
20 in section 235E.1.

21 b. "*Coercion*" means communication or conduct which compels
22 an older individual to act or refrain from acting against the
23 older individual's will.

24 c. "*Fiduciary*" means a person or entity with the legal
25 responsibility to make decisions on behalf of and for the
26 benefit of an older individual and to act in good faith and
27 with fairness. "*Fiduciary*" includes but is not limited to an
28 attorney in fact, a guardian, or a conservator.

29 d. "*Older individual*" means a person sixty years of age or
30 older.

31 e. "*Stands in a position of trust or confidence*" means the
32 person has any of the following relationships relative to the
33 older individual:

34 (1) Is a parent, spouse, adult child, or other relative by
35 consanguinity or affinity of the older individual.

1 (2) Is a caretaker for the older individual.

2 (3) Is a person who is in a confidential relationship with
3 the older individual. The determination of the existence of a
4 confidential relationship is an issue of fact to be determined
5 by the court based upon the totality of the circumstances.

6 *f. "Undue influence"* means taking advantage of a person's
7 role, relationship, or authority to improperly change or
8 obtain control over the actions or decision making of an older
9 individual against the older individual's best interests.

10 Sec. 2. CODE EDITOR DIRECTIVES. The Code editor shall
11 revise the title of chapter 726 to read "Protection of the
12 family, dependent persons, residents of health care facilities,
13 and older individuals".

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with
16 the explanation's substance by the members of the general assembly.

17 This bill establishes the crime of financial exploitation of
18 an older individual. A person commits financial exploitation
19 of an older individual when the person stands in a position of
20 trust or confidence with the older individual and knowingly
21 and by undue influence, deception, coercion, fraud, breach of
22 fiduciary duty, or extortion, obtains control over or otherwise
23 uses the benefits, property, resources, belongings, or assets
24 of the older individual. The criminal penalties range from a
25 simple misdemeanor to a class "C" felony based on the amount
26 of benefits, property, resources, belongings, or assets of the
27 older individual involved.